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IN THE UNITED STATES DISTRICT COURT  
FOR  
THE MIDDLE DISTRICT OF ALABAMA

THE UNITED STATES  
OF AMERICA

vs.

CRIMINAL ACTION NO.  
3:07-cr-313-MHT

PIERRE MARCELLO GUNNINGS

VOLUME II OF II  
2ND DAY OF  
JURY TRIAL PROCEEDINGS

\* \* \* \* \*

HEARD BEFORE: The Hon. Myron H. Thompson  
HEARD AT: Opelika, Alabama  
HEARD ON: May 13, 2008  
APPEARANCES: Kent Brunson, Esq.  
Donnie W. Bethel, Esq.  
Danielle Mason, Esq.

MITCHELL P. REISNER, CM, CRR  
Official U. S. Court Reporter  
Middle District of Alabama  
(334) 265-2500

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MITCHELL P. REISNER, CM, CRR  
 Official U. S. Court Reporter  
 Middle District of Alabama  
 (334) 265-2500

1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HEARD BEFORE THE  
2 HON. MYRON H. THOMPSON ON MAY 13, 2008 AT THE UNITED STATES  
COURTHOUSE IN OPELIKA, ALABAMA:

3

4 THE BAILIFF: The jury is now the entering the  
5 courtroom.

6 THE COURT: Ready to proceed?

7 MR. BETHEL: Yes, Your Honor.

8 THE COURT: Call your last witness.

9 MR. BETHEL: Your Honor, we have one additional  
10 witness. I let Mr. Green know that this morning. Someone  
11 who wasn't under subpoena that we just spoke with.

12 THE COURT: Okay. Go ahead.

13 MR. BETHEL: We have Mr. Eric Gowdy is the first  
14 witness this morning, Your Honor. Mr. Gowdy and Mr. Byrd  
15 have not been sworn.

16 E R I C G O W D Y,

17 the witness herein, having first been duly sworn or  
18 affirmed to tell the truth, was examined and testified as  
19 follows:

20 DIRECT EXAMINATION

21 BY MR. BETHEL OF ERIC GOWDY:

22 Q. Good morning, Mr. Gowdy.

23 A. Good morning.

24 Q. Sir, please tell the Court where you're from, the city  
25 and state.

1 A. I don't live in a city, but I live in the mountains in  
2 Nevada right now, but most of the time I spend my time in  
3 Montana.

4 Q. Sir, where are you from originally?

5 A. Dearborn River.

6 Q. Sir, where are you from originally?

7 A. Nevada, Montazooma (sic.)

8 Q. Have you ever served in the army?

9 A. Yes, sir.

10 Q. How long did you serve in the Army?

11 A. Three and-a-half years.

12 Q. And what was the period of your army service?

13 A. From February twentieth, two thousand two to June  
14 twentieth two thousand five.

15 Q. Do you know Pierre Gunnings?

16 A. I do.

17 Q. And how do you know Mr. Gunnings?

18 A. He was my in my company.

19 Q. Mr. Gunnings -- It's a little tough to hear in here. So  
20 if you wouldn't mind leaning into the mic.

21 A. He was in my company.

22 Q. And where was that company?

23 A. In Germany, the First Infantry Division.

24 Q. Were you actually stationed in Germany?

25 A. Yes, sir.

1 Q. And was Mr. Gunnings stationed in your unit as well?

2 A. Yes, sir.

3 Q. You said he was in your company. How big is a company?

4 A. It's about a hundred and twenty men.

5 Q. Is that broken down into any other divisions?

6 A. Yes. It's broken up into four platoons, usually a  
7 headquarters platoon and three other platoons.

8 Q. Were you in the same platoon as Mr. Gunnings?

9 A. No, I was not.

10 Q. Despite the fact that you weren't in the same platoon yet  
11 you were in the same company, did you spend a fair amount of  
12 time with him?

13 A. Just about every day when we got off work.

14 Q. Now could you describe for the members of the jury what  
15 kind of duties do you have in the infantry?

16 A. Well, when we're in the rear or not deployed, we clean  
17 weapons and maybe go over some training outside and we go  
18 play video games or watch movies.

19 Q. Do you do a lot of reading?

20 A. No.

21 Q. Do you have to fill out a lot of paperwork when you're in  
22 the infantry?

23 A. No. You just sign off for your weapon.

24 Q. What is your primary responsibility? What is it you're  
25 trained to do in the infantry?

1 A. Finding and fixing the enemy.

2 Q. What do you mean by find and fix the enemy?

3 A. Kill them.

4 Q. Now you served with Mr. Gunnings in Germany. Do you  
5 remember when he arrived in Germany?

6 A. Not exactly. I met Gunnings after I got back from  
7 Kosovo. He was hanging out with my friend, and from there we  
8 became best friends for about two and-a-half years.

9 Q. How long after he arrived at your unit did you get to  
10 know him?

11 A. I'm not sure exactly when he arrived, but I knew him from  
12 when -- I had known him for two and-a-half years.

13 Q. Did you get to know him pretty well?

14 A. Yes.

15 Q. Did you serve with him in Iraq?

16 A. Yes, I did.

17 Q. Did y'all see any combat while you were in Iraq?

18 A. Yes, we did.

19 Q. Now you said when you were in the rear or not deployed  
20 you said that you would clean your weapons and play video  
21 games. What was life like when you were deployed to Iraq?

22 A. Get out and get shot at and play video games.

23 Q. Now during the time that you knew Mr. Gunnings, did you  
24 ever become aware that he could not read?

25 A. Yes, he told me. He was quite embarrassed about it, but

1 he told me he couldn't read.

2 Q. Was this something he told you when you first met him?

3 A. No.

4 Q. How long had you known him before you found out that he  
5 couldn't read?

6 A. Almost a year. You don't really need to read, really. I  
7 mean if you don't ask someone to read, you don't know it.  
8 But he told me later on that he couldn't read.

9 Q. So, if I may, would you say it was only after you got to  
10 know him very well and became very good friends that he'd  
11 admitted that to you?

12 A. Yes, sir.

13 Q. Is there any doubt in your mind that while the time you  
14 two served in the army that Pierre could not read?

15 A. He couldn't read. He would ask me sometimes, "Tim could  
16 read something" for him. He wasn't a reader, that's for  
17 sure.

18 MR. BETHEL: No further questions, Your Honor.

19 THE COURT: Cross.

20 MR. BRUNSON: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. BRUNSON OF ERIC GOWDY:

23 Q. Mr. Gowdy, someone can read but not as you just got  
24 through saying be a reader, isn't that correct?

25 A. Well, it depends. I mean --

1 Q. They could not read books or magazines but they could  
2 read comic books and they could read directions on how to  
3 play video games and they could read but not be a, quote,  
4 reader?

5 MR. BETHEL: Your Honor, I object. This is clearly  
6 outside the scope.

7 THE COURT: Well, he's asking him to define what he  
8 means.

9 A. He never read in front of me ever, so there was no comic  
10 books. I don't know if you play video games, but it's all  
11 played through your thumbs, so there is no reading  
12 required.

13 Q. Did you ever go out to the eat with him other than on  
14 base?

15 A. I mean yes and no. But since we were in Germany, I can't  
16 even read the menu myself.

17 Q. And you didn't serve with him other than in Germany?

18 A. Germany and Iraq.

19 Q. That's all you served with him?

20 A. Yes, sir.

21 Q. So you were never around a place where you would have a  
22 menu that you would read?

23 A. No, sir.

24 Q. And you didn't have any periodicals or magazines or comic  
25 books to read?



1 A. Me personally, or him?

2 Q. Him, specifically.

3 A. I never saw any in his room, no.

4 Q. Do you know any of his family?

5 A. I just met his brother today.

6 Q. How did you learn about this case?

7 A. His nephew called me and told me, and then his lawyer  
8 called me and told me.

9 Q. Do you own any firearms?

10 A. Is that a relevant question?

11 MR. BETHEL: Your Honor, again, I object for the  
12 same reason that the witness just stated. It's completely  
13 irrelevant whether Mr. Gowdy owns any firearm.

14 THE COURT: Why are you asking him this?

15 MR. BRUNSON: Your Honor, I want to know why he's  
16 familiar with them, because if he doesn't own any it could be  
17 a lie.

18 THE COURT: You want to know if he owns any  
19 firearms?

20 MR. BRUNSON: Yes, Your Honor.

21 THE COURT: I'll sustain the objection.

22 Q. Do you know what is required for a person to buy a  
23 firearm?

24 A. Second Amendment.

25 Q. No, do you know what is required, a procedure? If you

1 don't know, that's a good answer.

2 MR. BETHEL: Your Honor, again, I object to this  
3 line of questioning.

4 THE COURT: I'll allow him to answer this question.  
5 Do you know what the regulations are to get a  
6 firearm? Federal regulations?

7 THE WITNESS: Federal regulations in the  
8 Constitution, the Second Amendment.

9 Q. Is it your testimony, then, that you don't recognize any  
10 limitations on the Second Amendment for a person to purchase  
11 or own a firearm?

12 MR. BETHEL: Your Honor --

13 THE COURT: Overruled.

14 A. My personal feelings are if you can read the Second  
15 Amendment you can interpret it yourself. It's pretty plain  
16 and simple.

17 Q. Do you think it is legal for a person who has been  
18 convicted of a felony to own a firearm?

19 MR. BETHEL: Your Honor, now I object to this  
20 question because that is not what is at issue in this case.  
21 There is absolutely no evidence --

22 THE COURT: He can show his bias. Overruled.

23 MR. BETHEL: Your Honor, if I may? What  
24 Mr. Brunson is asking do you think it's legal for someone who  
25 committed a felony to own a firearm. Number one, what he

1 thinks doesn't matter. Number two, that's not what this case  
2 is about. Mr. Gunnings hasn't been charged with possessing a  
3 firearm after being convicted of a felony.

4 THE COURT: Overruled.

5 A. No, I don't think a felony -- a felon should not own a  
6 firearm, no.

7 Q. How about a person who has been indicted for a felony  
8 offense?

9 A. I don't know. I have no opinion on that.

10 Q. How about a person who is an alien that is not a citizen  
11 of the United States?

12 MR. BETHEL: Your Honor --

13 THE COURT: I'll sustain that. We've gone too far.

14 Q. When you served two and-a-half years with Mr. Gunnings,  
15 were there any tests that had to be taken? Is that a period  
16 of time where --

17 A. No.

18 Q. There is no promotion within the --

19 A. Not until you go into an N. C. O. But neither of us were  
20 N. C. O.s.

21 Q. Were there any pay records that had to be filled out?

22 A. No.

23 Q. Any medical records?

24 A. No.

25 Q. How about leave records?

1 A. No.

2 Q. How would you classify Mr. Gunnings as being very bright,  
3 smart, stupid, retarded, how would you classify him?

4 A. Well I'm not a psychologist, but --

5 Q. But you have knowledge of him. You have an opinion of  
6 him?

7 A. Gunnings is fairly bright. I mean he can talk. He  
8 survived Iraq. There are different degrees of intelligence.  
9 You and I both know that. Some people have verbal skills,  
10 some people have writing skills, some people have eyesight  
11 skills. Some people are good at basketball, football,  
12 whatever. We can't all be a genius.

13 Q. But he's not stupid, is he?

14 A. I wouldn't say he's stupid, no.

15 Q. And you would say and did say that he is smart?

16 A. I didn't say smart, I said he's bright.

17 Q. You said he's bright. Would you say that with comparison  
18 to other people you served with, that he's brighter than  
19 most?

20 A. You're asking me to go way back, but --

21 Q. You're the one that came here, and I'm asking you what  
22 you know about him.

23 A. I'm not going to compare him with other people.

24 Q. Would you say that he's street smart?

25 A. Again, I don't know. I don't know what "street smart"

1 is. I'm from the country.

2 Q. How many times have you talked with anyone about this  
3 case?

4 A. I got to talk to the lawyer yesterday, and that's it.

5 Q. Yesterday for the first time?

6 A. Mm-hmm.

7 Q. How about any investigators in preparation for your  
8 testimony?

9 A. The man that picked me up at the airport yesterday, I  
10 asked him what's going on, and he said he didn't know what  
11 the heck was going on.

12 Q. And you talked to the nephew?

13 A. He just told me Pierre is in trouble, and I asked him to  
14 give me the lawyer's phone number. That's about it.

15 Q. Thank you.

16 THE COURT: Anything else?

17 MR. BETHEL: No, Your Honor.

18 THE COURT: Thank you. You may step down.

19 (Whereupon the witness, Eric Gowdy, stepped down  
20 from the stand.)

21 MR. BETHEL: We call Jamal Byrd.

22 J A M A L B Y R D,

23 the witness herein, having first been duly sworn or  
24 affirmed to tell the truth, was examined and testified as  
25 follows.

1 DIRECT EXAMINATION

2 BY MR. BETHEL OF JAMAL BYRD:

3 Q. Good morning, Mr. Byrd.

4 It's difficult for the court reporter to hear in  
5 here, so please lean forward and speak into the microphone  
6 when you answer the questions this morning.

7 Please state your full name.

8 A. Jamal Isaiah Byrd.

9 Q. Sir, in what city and state do you live?

10 A. Auburn, Alabama.

11 Q. How long have you been a resident in Auburn?

12 A. Sixteen years.

13 Q. So going back to nineteen ninety-two?

14 A. Yes, sir.

15 Q. Do you know Pierre Gunnings?

16 A. Yes, sir.

17 Q. And how long have you known him?

18 A. Out of those sixteen years I would say thirteen or  
19 fourteen years.

20 Q. So you've known him since at least nineteen  
21 ninety-four?

22 A. Yes, sir.

23 Q. How do you know Mr. Gunnings?

24 A. I met him at church, actually. He was coming to church  
25 with -- Fellow members of that church at the time brought

1 Pierre to church and that's where I met him.

2 Q. And that would have been back in ninety-four?

3 A. Yes, sir.

4 Q. How well have you gotten to know Pierre over the fourteen  
5 years or so since then?

6 A. Very well. He's like a brother to me.

7 Q. Has he ever spent any time living with your family?

8 A. Yes, sir. Approximately two years.

9 Q. When was that?

10 A. When he came home from the Service.

11 Q. During the course of those fourteen years, did you ever  
12 come to learn that Pierre Gunnings cannot read?

13 A. Yes.

14 Q. How long did it take you to find that out? From the time  
15 you met him in nineteen ninety-four, how long did it take you  
16 to actually discover or confirm that Pierre Gunnings can't  
17 read?

18 A. It had to be a matter of at least five to six years after  
19 I met him.

20 Q. How did you finally know for certain that Mr. Gunnings  
21 couldn't read?

22 A. He told me.

23 Q. So it took him five or six years before he even admitted  
24 to you that he could not read?

25 A. Yes, sir.

1 Q. How did he seem to feel about the fact that he could not  
2 read?

3 A. Like anyone would, embarrassed. Like I say, for him to  
4 read a document and it took him five or six years to tell me,  
5 but you don't want to pry into someone's business so I never  
6 asked what was going on as far as that was concerned. I knew  
7 he was in Special Ed classes.

8 Q. You said you knew he was in Special Ed classes when he  
9 was in school?

10 A. Yes, sir.

11 Q. After he admitted to you that he couldn't read, did that  
12 make sense to you then?

13 A. I put two and two together. Exactly.

14 Q. Is there anything else that you've experienced that would  
15 confirm for you that Pierre cannot read?

16 A. Yes, sir. He's asked me to fill out various  
17 applications.

18 Q. What kind of applications?

19 A. Job applications when he come back from the Service. I  
20 also filled out his car loan applications, and just various  
21 reading material that he's asked me to help him to do because  
22 he couldn't understand them.

23 Q. Is there any doubt in your mind that the Pierre Gunnings  
24 can't read?

25 A. No, sir.



1 Q. Thank you. No further questions.

2 CROSS EXAMINATION

3 BY MR. BRUNSON OF JAMAL BYRD:

4 Q. Mr. Byrd, in the five or six years that you knew Mr.  
5 Gunnings before you learned he couldn't read, were you ever  
6 in any situations where he did things that would make you  
7 think that he was able to read what he was doing? Such as  
8 reading a menu, or filling out job applications, or looking  
9 at magazines or books? Anything?

10 A. No, sir. Because before that time, like I say, I knew  
11 him but it wasn't a situation to where it was later on to  
12 where he was living with us and whatnot. So we basically saw  
13 each other at school and church and things like that, but  
14 there weren't any really situations where I would have  
15 noticed that.

16 Q. Did you ever see him read the Bible?

17 A. No, sir.

18 Q. Did you ever see him read a hymnal?

19 A. No, sir.

20 Q. When -- If you can determine a year, when did he tell you  
21 that he could not read?

22 A. It had to be two thousand, two thousand one, somewhere  
23 around that time.

24 Q. So is it correct that in two thousand one that he would  
25 have been a senior in high school?

1 A. That's correct.

2 Q. Do you know -- or have you maintained contact with him  
3 since two thousand one up through two thousand six?

4 A. Yes, sir.

5 Q. Did he take any reading tutorials or remedial courses to  
6 learn how to read even after he got out of high school?

7 A. Yes, sir.

8 Q. Would you say that Mr. Gunnings is a smart young man?

9 A. Yes, sir.

10 Q. Able to learn?

11 A. Yes, sir.

12 Q. So is it possible, then, that from two thousand one when  
13 he was a senior in high school and Special Ed that he could  
14 have developed reading skills up and through two thousand  
15 six?

16 A. That for sure I can't say.

17 Q. But he could have?

18 A. Possibly.

19 Q. You don't know that he didn't.

20 A. No, sir.

21 Q. When is the last time you were real close with Mr.  
22 Gunnings?

23 A. Up to the present.

24 Q. Is he street smart?

25 A. I'm not really sure what that entails.

1 Q. Okay. But he is a bright young man?

2 A. Yes, sir.

3 Q. He is capable of learning?

4 A. Yes, sir.

5 Q. Can you read?

6 A. Yes, sir.

7 Q. Do you have any difficulty reading?

8 A. No, sir.

9 Q. And you've already testified that you helped him fill out  
10 forms such as job applications?

11 A. Yes, sir.

12 Q. When did that happen?

13 A. In high school, and also when he moved in the with me and  
14 my family.

15 Q. And I believe your testimony was that that was when he  
16 got out of the Army.

17 A. Yes, sir.

18 Q. Did he tell you anything about his army service?

19 A. As far as?

20 Q. Anything.

21 A. Yes, sir. He told me about his experience in the Service  
22 and what it was like.

23 Q. Did he say anything about that he got it over on the Army  
24 that he couldn't read, they never knew it?

25 A. As far as I know they didn't know it.

1 Q. They didn't know he couldn't read?

2 A. Exactly.

3 MR. BRUNSON: No further questions, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. BETHEL OF JAMAL BYRD:

6 Q. Mr. Byrd, so Mr. Gunnings did tell you about his service  
7 in Iraq?

8 A. Yes, sir.

9 Q. Did he tell you what that was like?

10 A. Yes, sir.

11 Q. What did he tell you?

12 A. He basically told me about an experience he'd never  
13 forget, and just about all the bad things that he witnessed.  
14 Just pretty much things I couldn't even imagine, even with  
15 him telling me. It's still hard to fathom what he went  
16 through when he was over there.

17 Q. Would he have moved in with your family sometime in two  
18 thousand and five when he returned from Iraq?

19 A. Yes, I was one of the people who picked him up from the  
20 airport.

21 Q. So how long did you say he lived with your family when he  
22 returned from the Service?

23 A. Approximately two years.

24 Q. So that would have been from about two thousand five to  
25 two thousand seven?

1 A. That's correct.

2 Q. Is that the time period when you filled out job  
3 applications for him?

4 A. And also car loan applications, et cetera.

5 Q. All right. So it was during that two year period in two  
6 thousand five to the year two thousand seven when you were  
7 filling out applicants for him of various kinds?

8 A. Exactly.

9 Q. Now based on what you've seen of his ability or his lack  
10 of ability to read back when you were in high school, did you  
11 see any improvement from then until the time he lived with  
12 you and you were filling out those application for him?

13 A. No, sir.

14 MR. BETHEL: No further questions, Your Honor.

15 MR. BRUNSON: No questions, Your Honor.

16 THE COURT: Thank you. You may step down.

17 (Whereupon the witness, Jamal Byrd, stepped down  
18 from the stand.)

19 THE COURT: Do you rest?

20 MR. BETHEL: The Defense rests, Your Honor.

21 THE COURT: Any rebuttal?

22 MR. BRUNSON: No, Your Honor.

23 THE COURT: Members of the jury, we finished the  
24 evidence portion of the trial. We're going to take a recess  
25 for about fifteen minutes while we try to get the rest of the

1 trial ready for you.

2 When you come back we'll hear closing arguments  
3 from the lawyers which take about thirty minutes to a side,  
4 then I will charge you as to the law, that will take about  
5 twenty minutes. So, again, we're hoping that you can begin  
6 your deliberations sometime around eleven-twenty.

7 I'll excuse you, as I said, for about fifteen  
8 minutes. Don't forget to turn your notes over in your chairs  
9 so no one can see even if you've written nothing. Again, the  
10 do not discuss the case among yourselves.

11 Counsel, please remain in the courtroom.

12 (Whereupon, the jury was escorted out of the courtroom,  
13 and the following colloquy ensued):

14 THE COURT: Yes, Mr. Bethel?

15 MR. BETHEL: We'd renew our motion for judgment of  
16 acquittal, Your Honor.

17 THE COURT: The motion is denied.

18 Again, Mr. Gunnings, is it still your desire not to  
19 testify in light of the representations you made to the Court  
20 earlier?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And, again, you conferred with your  
23 lawyer about this?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Very good, then. I will have the

1 Court's charge ready in about the three or four minutes, and  
2 then we'll go over that after you've had a chance to review  
3 it.

4 Very good. Court's in recess.

5 Oh, Counsel, I have the stipulation, and I'll file  
6 it and it will be marked as court's exhibit one and it will  
7 go to the jury.

8 MR. BETHEL: Thank you, Your Honor.

9 (Whereupon, a recess was taken.)

10 THE COURT: Counsel, I think Mr. Brunson picked up  
11 the word "knowingly" in the charge twice, so I'll delete the  
12 first one so that it will appear only the second time. So  
13 the first definition on page eleven will be deleted, and I  
14 will then retain the definition on page thirteen, which is  
15 the same definition.

16 Any other objections?

17 MR. BETHEL: Actually, Your Honor, I would request  
18 that it be given both times. And this is why --

19 THE COURT: Well, the only thing is that the way it  
20 is now, it's given as a part of count one, whereas the second  
21 time it says "throughout the charge."

22 It's given as a part of count one. Whereas the  
23 second time it's given to apply everywhere throughout the  
24 charge.

25 MR. BETHEL: And, Your Honor, the only reason I

1 would ask that it be given in both locations is because it  
2 had been given on both of those locations on page ten and  
3 then also on page thirteen. We have a definition first of a  
4 statement being false or fictitious. And then we have --

5 THE COURT: Well go I did it twice. It should be  
6 given at the end of count two.

7 MR. BETHEL: That would be fine, Your Honor. The  
8 only reason I say that is because it goes hand and glove with  
9 the definition of first, a false or fictitious statement, and  
10 then a false entry.

11 THE COURT: I have no problems with that. I just  
12 think that the second time it's given generically as applying  
13 to the charge where the other time it's given is for count  
14 one. I don't want it to be applying only to count one.

15 MR. BETHEL: And that's why I would like it to be  
16 given twice; to make it clear as to that.

17 THE COURT: Anything else, Mr. Brunson?

18 MR. BRUNSON: No, Your Honor.

19 THE COURT: With that change, the charge will be  
20 given.

21 Bring in the jury, and we'll have closing  
22 arguments.

23 (Whereupon, the jury was escorted into the  
24 courtroom.)

25 THE COURT: Proceed, Mr. Brunson.



## CLOSING ARGUMENTS:

MR. BRUNSON: May it please the Court, ladies and of the jury.

It was yesterday afternoon, well about this time yesterday when the jury selection process began. We took up the jury selection process for the balance of the morning, and then about one-fifteen or one-thirty was when you heard the first witness. So this case has not taken a real long time to try. But as I stated in opening statement, this is an important case for both parties in this case.

This case started out with an indictment. I've explained that to you in opening. You've heard testimony about it. The judge is going to give you further information and read the indictment to you and tell what you has to be proved to reach a verdict in this case. The elements in this, and the judge will go over it in detail and listen to him because what I say is not what you are being charged, that will come from the bench, but first that the defendant -- and this is in violation of nine twenty-two A six which is count one -- that the defendant acquired or attempted to acquire a firearm from a federally firearm licensed dealer.

You heard Doug Johnson say that Pawn Central is a federal firearm licensee. So you know that has been proved. And it really, quite frankly, hasn't been in dispute. That's something that has to be proved and it has been.

1           Second is the defendant knowingly made a false or  
2 fictitious statement in writing which was intended to and  
3 likely to deceive the dealer. And certainly this statement  
4 was likely to and was intended to deceive the dealer; that  
5 statement being, "Are you under indictment for a felony  
6 offense?"

7           You know from Bonnie Derrer that prior to December  
8 the sixteenth, two thousand and six when this form was filled  
9 out, that Mr. Gunnings was under indictment for a felony  
10 offense in Georgia. Not only did she come and testify to you  
11 about that, ladies and gentlemen, the parties have agreed to  
12 that. It's a stipulation that has been agreed to. It is  
13 admitted by the Court, and he'll instruct you on how the  
14 weight and how to consider a stipulation.

15           I certainly don't want to overlook, because this is  
16 the important part of this case, was that statement made by  
17 the defendant in writing made knowingly. Did he know what he  
18 was doing when he made that statement. I'll come back to  
19 that, but that is the critical issue of this count.

20           The third element is the defendant -- that the  
21 subject matter of a false statement was material to the  
22 lawfulness of the sale. Remember in opening statement I  
23 believe I said that materiality was an element, that it  
24 didn't have to be proved, that it would be determined by the  
25 Court? He's going to instruct you on that. And he's going

1 to instruct you that this statement was material. It was a  
2 material statement to determine whether or not Mr. Gunnings  
3 could lawfully purchase a firearm. That's the first count.

4 And count two, and this is the violation of Title  
5 Eighteen, Section nine twenty-four A one A, the elements of  
6 this offense are that the person named in the indictment was  
7 a federal licensee -- that the person named as such in the  
8 indictment was a federally licensed firearms dealer at the  
9 time the alleged offense occurred. And that is Pawn Central.  
10 And again, Doug Johnson told you that they were.

11 Second, that the defendant made a false statement  
12 or representation in the firearms records, the licensed  
13 firearms dealer are required by federal law to maintain.  
14 Again, Doug Johnson and Agent Panoke told you that federal  
15 firearm licensees are required to keep that form forty-four  
16 seventy-three. So that's been proved.

17 Third, that the defendant made the false statement  
18 or representation with knowledge of the falsity. There,  
19 again, knowledge is the critical part of this case, both in  
20 count one and in count two. What I'm telling you to combine  
21 that is, again, not in dispute because I remember in opening  
22 statement by Mr. Bethel, he said that it would be illogical  
23 for you to find Mr. Gunnings guilty on one and not guilty on  
24 the other, whichever way you twist them. The issue is the  
25 same, did he knowingly make a false statement.

1 Did he make a false statement with knowledge that  
2 the statement was false. When you weigh the evidence,  
3 certainly the stipulation, the exhibits, the testimony --  
4 some of you have made notes and some of you may not have made  
5 notes. But as the Judge instructed you when he told about  
6 making notes, consider your memory of the case and not just  
7 any note that was to be taken. Some didn't take notes.  
8 Those who didn't, your input in this case is no less than  
9 somebody who took copious notes; that is, full notes of  
10 everything.

11 In my observation of the jury, you have been very  
12 attentive to the witness and not been busy note-taking. You  
13 have been attentive to what was being said. But consider  
14 that a consideration with care.

15 In the Government's presentation in this case Will  
16 Panoke testified he investigated this case. That he got the  
17 form four-forty seventy-three. He made a copy and you're  
18 going to have both of those when you go to deliberate.  
19 Government's exhibit one and Government's exhibit one A, and  
20 they're actually the same. You can just read what is on one  
21 A whereas you can't on Government's exhibit one.

22 We've already talked about that form four-forty  
23 seventy-three. It is required to be kept, and we got that  
24 from Pawn Central, which is a federal firearms licensee.

25 This case came about because Mr. Gunnings had been

1 indicted in Georgia on September the 21st, two thousand and  
2 six. Bonnie Derrer told you that. Her testimony, as I wrote  
3 it down, was that he didn't make one but two court  
4 appearances prior to his filling out the form. Specifically,  
5 on November the sixth, two thousand six, and again on  
6 December the fourth of two thousand and six he appeared in  
7 court and was processed by the Court.

8           After that, on December the sixteenth, two thousand  
9 and six he went to Pawn Central, filled out this form in  
10 question, and answered the questions just perfectly to  
11 acquire a firearm. But in this case, the system worked. And  
12 because of information received at F. B. I. headquarters, he  
13 was denied the purchase. That doesn't mean he didn't commit  
14 the offense, because it includes attempted to purchase as  
15 you'll see and you'll be instructed by the judge. So he had  
16 been in court.

17           Now he could come in and argue that if all he was  
18 was indicted on September twenty-first, that I didn't know I  
19 was indicted, but he made appearances on November the sixth  
20 and on December the fourth, both prior to his attempted  
21 purchase of his firearm and his filling out that form on  
22 December the sixteenth when he said that he was not under  
23 indictment.

24           How did he know what he was doing? Remember in  
25 opening statement, and as the judge will tell you, apply your

1 common sense to your deliberations. The defense is in every  
2 witness, I wrote down I believe nine or maybe ten witnesses  
3 who testified. And the gist of every witness was that Mr.  
4 Gunnings couldn't read. Now that goes back from when he was  
5 sixteen. It go goes back to Mr. Fowler. Scott Fowler had  
6 him in the school year nineteen ninety-nine, two thousand.

7           When you look at defendant's exhibit number two,  
8 you'll see that school year, nineteen ninety-nine two  
9 thousand, was when he was in the eleventh grade. He had  
10 twelfth grade, and at least five more years of learning  
11 before he filled out this form in two thousand and six. He  
12 knew what he was doing. He filled out that form accurately  
13 to purchase a firearm. What direct evidence -- and that's  
14 where you can use your common sense, to apply that. It's  
15 circumstantial evidence. As the judge will instruct you,  
16 circumstantial evidence is just as valuable in your  
17 deliberations as direct evidence.

18           What direct evidence do you have that Mr. Gunnings  
19 knowingly filled out that false statement? That he knew what  
20 he was doing when he answered questions.

21           Bonnie Derrer came as a Government witness. And  
22 she testified about the indictment and about the date of  
23 appearances, as I've already described. And I didn't ask her  
24 a lot of questions of her because that had already been  
25 stipulated, that he admitted to his felony offense -- excuse

1 me, felony indictment.

2 Mr. Bethel then asked, "You don't know if he can  
3 read or write or not, do you?" Do you remember that  
4 question? That's the first question he asked. Yes, he can  
5 read or write, he filled out the forms. Mr. Bethel is a  
6 great attorney. He continued to question. And I'm not sure  
7 that I understand her testimony on this because I've tried to  
8 correlate the dates as I've listened to witnesses. Some have  
9 had clear understandings of the dates.

10 The aunt, I don't believe knew how long he served  
11 in the military, and when he got out. But we heard a good  
12 bit of testimony about his service in the military and I  
13 wrote down that when he appeared on at least one of those  
14 occasions in Georgia, he was in military uniform. Remember  
15 these the two dates, November the sixth, two thousand six and  
16 December the fourth, two thousand and six.

17 Mr. Bethel followed that up with another question  
18 about her observing Mr. Gunnings, and she said, "He is  
19 obviously literate." Remember her testimony? "He is  
20 obviously literate." That is direct evidence in support of  
21 the fact that Mr. Gunnings knowingly completed the form which  
22 is charged in count one and count two? One.

23 Of the instructions to listen to pertains to  
24 witnesses. And when you hear the evidence -- or when you go  
25 back and hear the instructions and you go back to consider

1 the evidence, the judge is going to instruct you don't weigh  
2 your judgment on the number of witnesses. The weight of the  
3 witnesses is not how you're to reach your verdict, and you'll  
4 be instructed by the judge. It's the credibility of the  
5 witnesses that you need to hinge your verdict on.

6 Analyze the witnesses. Put your memory to how they  
7 appeared on the stand. Were their answers direct and  
8 succinct? Did they answer the questions? Did they know what  
9 they were talking about? Did the witness that you're  
10 considering have something to gain or lose by their  
11 testimony? Who had the most to the gain by the testimony,  
12 and who had the most to lose.

13 There certainly is a dispute, there is a big  
14 dispute, and I'll submit the evidence is clear that Mr.  
15 Gunnings could read sufficiently to completely fill out this  
16 form, and that he answered one of the questions untruthfully,  
17 which is a violation of the law, and your sworn obligation is  
18 to hold him accountable for that.

19 I urge you to look over, and I'm sure you will,  
20 this form. It's been handled. It's been talked about. It's  
21 been shown to witnesses. A blowup has been made of this  
22 exhibit so you know firsthand most of what's on here. But  
23 what not a lot has been said about, other than Steve Wingo  
24 who was the employee of the Pawn Central who went over the  
25 form in Pawn Central, Is that their portion, portions of page



1 two that he completed with Mr. Gunnings standing before him,  
2 having just presented his driver's license.

3 Alabama driver's license, number seven one eight  
4 four two three five. Expiration month oh five. Date, oh  
5 four. Year, two thousand eight. He did that with Mr.  
6 Gunnings right before having presented his driver's  
7 license.

8 I ask you to look also on page two, or on page four  
9 is the name is printed. But on page two of this form where  
10 Mr. Gunnings' signature appears, how Ms. Thomas said he wrote  
11 small? See how small this handwriting is where he wrote his  
12 signature and the date, certification date, twelve sixteen oh  
13 six. Pass it out. Look over this form very carefully.  
14 Determine yourself if the Government has proved beyond a  
15 reasonable doubt, and that's your measure. Not all doubt,  
16 not all possible doubt, but a reasonable doubt that Mr.  
17 Gunnings knew what he was doing when he went into Pawn  
18 Central in Opelika, Alabama and filled out this form.

19 Another circumstance to consider. Mr. Johnson gave  
20 this testimony. On the form that you'll examine, that you'll  
21 see what he was purchasing a "handgun" is checked. The  
22 options are "handgun," "long gun," "bow". And there is a  
23 square to be checked and the "handgun" is checked.

24 Getting back to Mr. Johnson's testimony, he said  
25 that Mr. Gunnings on the day that he made this application

1 purchased a clip for a twenty-two Beretta handgun. He  
2 intended to purchase that firearm. He knew what he was  
3 doing, and in anticipation of every receiving that firearm  
4 three days later, he got a clip for it. That is another  
5 indication that he knew what he was doing that you can  
6 consider.

7 I have used up part of my time. And again I thank  
8 you for your attention. I'm going to sit down. Mr. Bethel  
9 will sum up his evidence for you and I will come and make a  
10 final summation before the judge instructs you, and then you  
11 can go to the deliberate.

12 I thank you for your attention.

13 THE COURT: Mr. Bethel?

14 CLOSING ARGUMENTS:

15 MR. BETHEL: May it please the Court, Your Honor,  
16 ladies and gentlemen of the jury.

17 John Cochran graduated from college and taught high  
18 school for seventeen years without being able to read, write  
19 or spell. Cochran's life of secrecy started at a young age.  
20 He said his teachers moved him up from grade to grade and  
21 often placed him in what he calls "the dumb row". I can  
22 remember when I was eight years old saying my prayers at  
23 night saying, "Please, God, tomorrow, when it's my turn to  
24 read, please let me read." Cochran later attended Polavary  
25 (ph.) High School in Carlsbad, California.

1           He cheated his way through high school, receiving  
2 his diploma in June of nineteen fifty-six. He asked stole  
3 tests and persuaded friends to complete his assignments.  
4 Cochran earned an athletic scholarship at Texas Western  
5 College. He said his cheating intensified, claiming he  
6 cheated in every class. In nineteen sixty-one Cochran  
7 graduated with a Bachelor's degree in education while still  
8 illiterate.

9           He then went on to become a teacher during a  
10 teaching shortage. For seventeen years the Cochran taught  
11 high school for the Oceanside School relying on teachers'  
12 assistance for help and oral lesson plans. He said he did a  
13 great job at teaching his students.

14           It wasn't until he was forty-eight years old that  
15 he gave reading and writing another chance. He drove to an  
16 inconspicuous office with a sign he couldn't read. He  
17 studied and worked with a tutor at The Literacy Center in  
18 Carlsbad. Carlsbad City literacy coordinator Terry Scott  
19 said that people of all walks of life go through the reading  
20 program, including teachers. That story was in the news back  
21 in February of this year. It was in the actual news.  
22 Headlines.

23           Forty-eight years old, seventeen years as a high  
24 school teacher could not read, write and spell. Yet Mr.  
25 Brunson would have you believe that because Pierre Gunnings

1 managed to graduate from Auburn High School with an  
2 occupational diploma, and because he somehow got in the army  
3 and served three years, he must be a genius when it comes to  
4 reading. Pierre Gunnings can't read. If we know one thing  
5 for certain at the conclusion of all the evidence, we know  
6 that.

7           Mr. Brunson talked about the witnesses. Who came  
8 up to this witness stand and testified and told you one thing  
9 about Pierre Gunnings and his ability to read? Well, we  
10 heard from first of all Mr. Scott Fowler. His high school  
11 teacher. And he explained what it means to get an  
12 occupational diploma. That's what a Special Ed gets.

13           Mr. Fowler told you that he had a Master's degree  
14 in Special Education. Taught Special Education in Auburn  
15 High School for seven years. He taught Pierre for an entire  
16 year. An hour and-a-half every single day for five years.  
17 He told you there was no doubt in his mind that Pierre  
18 Gunnings cannot read and couldn't possibly have read those  
19 big words on that form that we talked about.

20           Words like "firearm". "Indictment".  
21 "Information". He told you he couldn't read those words.  
22 And what Mr. Brunson tried to argue to you, he said well, he  
23 had a lot of time to learn. He had a lot of time to figure  
24 out how to read those words between nineteen ninety-nine and  
25 two thousand, two thousand six. December of two thousand six

1 when Mr. Gunnings filled out that form at Pawn Central.

2 But what did the other witnesses in this case tell  
3 you? Well, who else did we hear from? We heard from his  
4 aunt, Devereau Racossi. And she told you that Pierre can't  
5 read. That it was well known in the family that he couldn't  
6 read. She told you that she knew how Pierre got in the army,  
7 that his brother William took the test for him to get in.

8 We also heard from Anthony Davis, his cousin, who  
9 also told you that everybody in the family knows that Pierre  
10 can't read. We heard from Ms. Butler, his grandmother, the  
11 woman who really raised Pierre. She said she recognized as  
12 soon as he came to live with them that he had reading  
13 problems.

14 We heard from Tequila Griffin. She was his  
15 girlfriend when? Beginning about two years ago in the summer  
16 of two thousand six, and was his girlfriend for a year. That  
17 would be the summer of two thousand seven. What's right in  
18 the middle of the summer of two thousand six and the summer  
19 of two thousand seven? Well that would be December two  
20 thousand six, the time when Mr. Gunnings went to Pawn Central  
21 and filled out that form.

22 What did she tell you? She had absolutely no doubt  
23 that Pierre Gunnings can't read. She filled out a lease for  
24 him. She read to him. There was no doubt in her mind that  
25 he couldn't read.

1           We heard from Eric Gowdy. He testified you don't  
2 have to read to be an infantry troop.

3           First of all, we heard from William Gunnings, his  
4 brother, who testified that Pierre can't read. That he tried  
5 to take a test twice, failed miserably both times, and that  
6 he shouldn't have done it, it's not proper, no dispute about  
7 that, but what's done is done. That he took his brother's  
8 driver's license, memorized his Social Security number, went  
9 down and took the test for him, and that's how he got into  
10 the army. And you know what? I'll guaranty you that's not  
11 the first or the last time that something like that has  
12 happened in army recruiting.

13           Mr. Brunson hinted that oh, how could he possibly  
14 survive three years in the army if he can't read? How come  
15 they didn't throw him out? Well, let's see. He got in in  
16 late two thousand two. What was going on? Well, there was  
17 already talk of war in October, November, December of two  
18 thousand two because he went to Iraq in two thousand and  
19 three. And when did he serve? He served during that war.  
20 Where did he serve? He served in Iraq.

21           Does anybody in this room really believe that the  
22 army is going to throw someone out because they can't read in  
23 the middle of a war? We got troops in Afghanistan, troops in  
24 Iraq. There are a hundred forty thousand plus there right  
25 now. I just heard a story on National Public Radio this week

1 about an army specialist, not even a sergeant, he's an  
2 enlisted troop, because he had prior service they let him  
3 back in at the age of fifty-six. The army needs every man  
4 they can get.

5 Now his brother said he wanted to get into the army  
6 so he could get a skill. But where did the army put him?  
7 Did they make him a truck driver? Did they make him a medic?  
8 Did they put him in communications? No. Where did put him?  
9 They made him an infantryman. What do you need to know to be  
10 an infantryman? You need to know how to shoot a weapon and  
11 kill the enemy. That's what you need to know. So he didn't  
12 get the skills, the technical skills that he hoped to get by  
13 joining the army. And why did the army put him in that  
14 career field? Well, you have to be able to read to do  
15 anything else. That's how he got in the army.

16 So we finally heard from Miss Patsy Thomas. Again,  
17 Master's degree in education. Been working with literacy  
18 programs as a volunteer for thirty years. Herself an army  
19 wife, traveled all over the world working with people who  
20 can't read. What does she tell you? That two years ago,  
21 sometime between January and March of two thousand and six  
22 Pierre Gunnings, like Mr. Cochran in the story I told you,  
23 found his way to the Lee County Literacy Program because he  
24 wanted to learn how to read.

25 Now I tell you what. If that was some sort of

1 rouse, he is one clever guy. I know what I'll do, I'll show  
2 up in January, get started with this literacy program, fill  
3 out a form in December fraudulently, and then later claim I  
4 can't tell read. How about that? Now does anybody in this  
5 courtroom believe that for a minute? Of course not. Ms.  
6 Thomas said she's tutored him from two thousand six, at the  
7 latest March, and until the present. And she told you in  
8 December of two thousand six there was no way he could read  
9 and understand the words on this form. It is simply not  
10 possible. There's no doubt.

11 What was the biggest word that she could think of  
12 that Pierre Gunnings could possibly read and maybe understand  
13 on his own? Clear. Five letters, one syllable. Mr. Fowler  
14 said Pierre could read some small one syllable words. He  
15 can't multisyllabic or polysyllabic words.

16 So one thing we know for sure. There is one thing  
17 we know for absolutely certain, and that is that Pierre  
18 Gunnings could not possibly have read and understood these  
19 questions and filled this form in based on his own ability to  
20 understand those questions. It's simply not possible. We  
21 know that.

22 They didn't offer any, any evidence to dispute the  
23 fact that Pierre Gunnings can't read. So the only question  
24 is, then, how did that get filled out? Well obviously  
25 somebody had to tell Mr. Gunnings how to full it out



1 ultimate.

2           Now let's look at some of the things on this form.  
3 What do we have under "county"? Lee. What do we have under  
4 "foreign country"? "Lee". Now if you can't read, there is  
5 only one letter difference between county and country. Do  
6 you see any squiggly lines that look very much like those  
7 squiggly lines with one very minor difference. If you can't  
8 read, and you know if you put Lee in here you'll put Lee  
9 right in there. That's what happens if you can't read.

10           How many people in this room, how many members of  
11 the jury, the judge, the members of the court personnel, the  
12 members of the defense team, the prosecutor, the witnesses,  
13 how many of us would have made that mistake on this form?  
14 How many? Not one. Not one single person. There is only  
15 one person in this courtroom who would have made that  
16 mistake, and it's the one man in the courtroom who cannot  
17 read, and that would be Pierre Gunnings.

18           How about this. A-l-b-a-m-a crossed out and the  
19 correct spelling written in. How many members of the jury,  
20 or the judge, or the courtroom personnel, or the prosecutor  
21 would have made that mistake, would have misspelled the state  
22 in which they live? Not one. Only one person in this  
23 courtroom that would have made that mistake, and that's the  
24 man who cannot read and that's Pierre Gunnings.

25           And how about these questions. How do they get

1 filled out? Well we really don't know. We know he didn't  
2 understand those questions. I'll tell you what's likely to  
3 have happened. When was it? Sixteen December two thousand  
4 six. That's right in the middle of what season? The  
5 Christmas shopping season. We know that the Mr. Wingo said  
6 the pawnshop is very busy. It gets a lot of customers. It's  
7 right in the middle of the Christmas shopping season. What's  
8 likely to have happened?

9 Mr. Gunnings hesitates, doesn't know what to do, he  
10 can't fill out the form because he can't read it. What's Mr.  
11 Wingo say? Look, yes, the rest are no, done. That's it.  
12 It's that simple. Now he's never going to admit it.

13 What did Agent Panoke testify? He said it's  
14 against the law to him tell him what to put down on it. He's  
15 not going to admit that. He's not going to get up on the  
16 witness stand and admit that he broke the law by simply  
17 telling him what to fill out. But he's working at a busy  
18 pawnshop during the Christmas season. Look, yes, no, done.

19 But what's the problem with that? One problem.  
20 That last question is not supposed to be no. What does that  
21 question read? If you answered yes to question eleven point  
22 L, this one right here, do you fall within any of the  
23 exceptions set forth in four, exception two. What? Well, if  
24 you can read one those questions you know you're not going to  
25 put anything in there.

1 But if you can't read, you put no, just like you  
2 did for the previous question. What's the previous question?  
3 "Are you a nonimmigrant alien?" First of all, he can't read  
4 a word like "nonimmigrant." He can't read a word like  
5 "alien". He didn't know. He just filled it out the way the  
6 pawnshop employee told him to fill it out. And that's what  
7 he did. Cross that out, write in N A and put your initials  
8 right there.

9 Now that had to happen. There is no other way that  
10 that could have been crossed out in a written and P. G.  
11 written in. He wouldn't have known to do that. I wouldn't  
12 have known to do that. You wouldn't have known to do that.  
13 None of us would. Only somebody who works in that industry  
14 and fills out those kinds of forms all the time would know  
15 that's wrong, here's what you have to do. So the pawnshop  
16 employee had to tell him that.

17 Now imagine what it must be like to be Pierre  
18 Gunnings and have to sit here in this courtroom and listen to  
19 this parade of witnesses come in and tell you he can't read.  
20 What did Ms. Thomas and Mr. Fowler tell you? That's  
21 something people don't readily admit. They try to hide it.  
22 They try to keep it a secret. Mr. Fowler told you especially  
23 for males. They especially are embarrassed, humiliated and  
24 don't want people to know they can't read.

25 Mr. Gowdy was an army buddy. A good army buddy.

1 It took him a year to find out before Mr. Gunnings confided  
2 in him. Jamal Byrd. What did Jamal Byrd tell you? I forgot  
3 to mention him earlier. Mr. Gunnings lived with him for two  
4 years and his family. He told you about how he filled out  
5 all those forms for him, for job applications, for a credit  
6 application. He had no doubt that Pierre Gunnings can't  
7 read. It took him five or six years to find out that Pierre  
8 can't read before Pierre admitted it to him.

9 So is it any surprise, ladies and gentlemen of the  
10 jury, that on that day, that Agent Panoke called him on the  
11 phone and wanted to question him about this form?

12 Mr. Brunson asked well, did he tell you that he  
13 couldn't read? No. Aha, he must be lying about the fact he  
14 can't read. What do you expect Pierre Gunnings to do? This  
15 man calls him he's never met, tells him he's a federal agent,  
16 tells him he wants to talk to him about filling out this  
17 form, this question, you answered no, that's false. Do you  
18 really expect Pierre Gunnings to say I'm sorry, I'm an idiot.  
19 I'm be a moron, I can't read. I'm twenty-six years old and  
20 I? Can't read a lick. That's absurd. It's absolutely  
21 ridiculous.

22 So what did he say according to Agent Panoke?  
23 Well, I didn't know I was under indictment. Agent Panoke  
24 said he was driving, sounded preoccupied. He's going to say  
25 anything other than the truth, which is he can't read. And,

1 you know, if all you're relying on is the facts and the  
2 evidence, how can you twist things around like what Agent  
3 Panoke did? How can you have to throw something out there  
4 where the Court has to give an admonishment to the jury that  
5 he never should have said that? How come when I asked him a  
6 simple question I couldn't get a simple answer?  
7 How come when I asked him didn't Mr. Gunnings sound  
8 preoccupied on the phone? What was his answer? Well, what  
9 did he say? "Well, that's possible." Then I asked him now  
10 wait a minute, when you testified earlier in front of the  
11 judge, isn't that the word you used? "Well yes, it is."  
12 That's his word. It came right out of his mouth. I just  
13 asked him to admit that he said it and he tries to hedge.  
14 "Well, that's possible." Why? Why? If all you're relying  
15 on is the facts and truth, why are you trying to do that.

16           What did Agent Panoke really add to the case? Not  
17 much. He wasn't there when that form got filled out. He  
18 didn't even bother the pawnshop employees for three months.  
19 Ninety days. That's why Mr. Wingo couldn't pick him up out  
20 of a lineup. He didn't remember the transaction. The only  
21 reason he knew that he was involved was because he recognized  
22 his handwriting and his name on the form. He couldn't tell  
23 us anything about how it actually transpired. They have to  
24 prove that.

25           Proof beyond a reasonable doubt, not only that the

1 letters N O are written in this case, but Pierre Gunnings at  
2 the time that he wrote that in there not only knew what that  
3 question was, but understood it. Because he has to knowingly  
4 make a false or fictitious statement. That's in the  
5 instructions the judge is going to give you.

6 Mr. Wingo can't even tell you how that transaction  
7 transpired. He doesn't remember.

8 What did Mr. Johnson add to the case? Well, he  
9 said that Pawn Central is a federally licensed firearm  
10 dealer. Okay. No dispute. That's it. He didn't remember  
11 Pierre Gunnings. He specifically said he couldn't pick him  
12 out of a lineup. He had nothing to do with this transaction.  
13 That's it.

14 How about the rest of the Government's case? How  
15 about the fourth witness? The assistant district attorney  
16 who said oh I've got the forms. He can read and write. He's  
17 literate. Gave you a specific conclusion.

18 And the one thing I do agree with Mr. Brunson that  
19 he said during his closing statement, he said that Mr. Bethel  
20 is a very good attorney. I heard him say that and I'll  
21 concur with that. And because I'm a good attorney I didn't  
22 stop there. What did I ask her? Now wait a minute, did you  
23 see him fill out that form? Well, no. Did you see him read  
24 it? No. Did you hear him read it out loud? No. So  
25 actually you don't know whether he filled out that form,

1 right? Well, that's right. She admitted it.

2 How presumptuous and arrogant on her part to simply  
3 say that because she's got a form that somebody filled out  
4 and that he signed it, that she can therefore conclude that  
5 he's literate, that he can read and write when she wasn't  
6 there and didn't see who filled out the form? But what do  
7 you expect her to say? She's a prosecutor. Just like  
8 Mr. Brunson, her job is to prosecute people and throw them in  
9 prison. That's what she does for a living.

10 Now I wouldn't have been a very good attorney if I  
11 hadn't asked those follow-up questions and had her admit that  
12 she didn't see him fill out that form. She didn't see him  
13 read it. She was basing that conclusion on the fact that it  
14 was filled out and had his signature on it.

15 How many people testified that they have helped  
16 Pierre Gunnings fill out forms? Jamal Byrd did. His  
17 girlfriend, Tequila Griffin, did. Job applications, credit  
18 applications, leases. That's their says. That is their  
19 whole case. Those four witnesses. And here's what they want  
20 you to do. They want you to give them the benefit of a  
21 doubt. They have not proven, not even close to beyond a  
22 reasonable doubt whether the Pierre Gunnings wrote the  
23 letters N O on that form, that he could read and understand  
24 or somebody explain to him what's on that form. Not even  
25 close.

1 But you know what? In this courtroom, in our  
2 system of justice, prosecutors don't get the benefit of the  
3 doubt. The benefit of the doubt goes to one person and one  
4 person only and that is the person who is accused. The  
5 person who walks into this courtroom with a presumption of  
6 innocence. That's why they have to prove their case beyond a  
7 reasonable doubt. Because this isn't communist China, this  
8 isn't North Korea, this isn't Cuba.

9 We don't have governments that run around and lock  
10 people up because they don't like what they say, because they  
11 think they might be a criminal. Don't give them a trial,  
12 let's throw away the key. This isn't a communist country.  
13 This is a country where the rule of law applies. And because  
14 we value freedom and liberty so highly, we have decreed as a  
15 nation, it's not enough if you think somebody might have  
16 committed a crime, it's not enough if you think that it's  
17 more than likely than not that they committed a crime, it's  
18 not even enough if you think they probably committed a crime.  
19 You can't throw someone in prison in this country unless you  
20 can prove beyond a reasonable doubt that they're guilty of a  
21 crime. And the Government hasn't done that.

22 Mr. Brunson just threw it out there. Oh, he filled  
23 this form out perfectly. Country, Lee; misspelled Alabama;  
24 cross that out and then fix that. That doesn't look  
25 perfectly to me. Does that look perfectly to you?



1           He also said there is intent to deceive. There is  
2 no intent to deceive in filling out that form the way it's  
3 filled out unless you can conclude beyond a reasonable doubt  
4 that Pierre Gunnings knowingly put a false statement on  
5 there. That's the key. And this case is all about  
6 knowingly. That's what this case is about. And the simple  
7 fact of the matter is that they haven't come close to proving  
8 beyond a reasonable doubt that Pierre Gunnings knowingly  
9 falsified the information.

10           As I said in my opening statement, count one, count  
11 two, there is very little difference between the two. They  
12 both are all about whether that form was knowingly and  
13 intentionally falsified with the intent to deceive. That's  
14 the question. They haven't proved it. What we know for sure  
15 -- The only thing we really know beyond a reasonable doubt is  
16 that Pierre Gunnings can't read.

17           So beyond that, they would have to prove just  
18 exactly how that got to him. What did the pawnshop owner  
19 tell him? How much help did he give him in filling out that  
20 form? Did he explain it thoroughly, or did he just tell him,  
21 as is certainly possible, hey, this is yes, the rest are no.  
22 Date the form. It's the middle of the Christmas season. Let  
23 me know and write a check. It's a pawnshop. It's not the F.  
24 B. I. It's not the A. T. F. It's a pawnshop. Anybody that's  
25 ever been in a pawn shot knows it is not exactly a federal

1 government agency.

2 So is that a possibility? Absolutely. And they  
3 have done nothing to remove that possibility.

4 Forty eight years old. School teacher. Seventeen  
5 years as a high school teacher, and couldn't read, write or  
6 spell.

7 Finally walked into that literacy office because he  
8 wanted to learn how to read. Just like Pierre Gunnings did,  
9 a disabled, Iraqi war veteran and he wanted to learn to read.  
10 You know what? If he could read and write, if he could  
11 understand, well certainly he knew he was under indictment.  
12 We don't dispute that. It's not an issue. If he could read  
13 and understand, you know what that said? The minute he read  
14 that he either would have put yes or he just walked out of  
15 there. He could have said, thanks, never mind. And you know  
16 what.

17 Anybody in this courtroom, it wouldn't take you  
18 more than fifteen minutes on the street to talk to a few  
19 people and find out where you could buy a piece from some guy  
20 for fifty bucks without having to do it legally and lawfully  
21 from a federal firearms licensed dealer. It just doesn't  
22 make any sense. He didn't want to go on the street and just  
23 buy a piece. Saturday night special fifty bucks?

24 The simple matter of the fact is, ladies and  
25 gentlemen of the jury, that the Government hasn't proved

1 their case beyond a reasonable doubt.

2 Now Mr. Brunson gets to get up here and talk to you  
3 again. This is my only chance. Why does he get to talk to  
4 you twice? Why does he get to start the closing argument and  
5 end the closing argument? Because the burden of proof rests  
6 with the Prosecution. Pierre Gunnings has no burden to  
7 present any evidence whatsoever in this courtroom. And I  
8 submit to you if we didn't put on one single witness, not one  
9 single witness to explain that Pierre Gunnings doesn't read,  
10 they still haven't proved that he could read or understand,  
11 or somebody explained that question to him. Even without  
12 that.

13 But with the witnesses that we put on, again, the  
14 testimony that's undisputed. Truth beyond a reasonable doubt  
15 is proof of sufficient that we're going to convict someone  
16 and we're going to deprive them of their liberty and throw  
17 them behind bars? Not even close. Not even close, ladies  
18 and gentlemen of the jury.

19 Very simple. When you deliberate, you should find  
20 Pierre Gunnings not guilty.

21 THE COURT: Mr. Brunson?

22 MR. BRUNSON: Thank you, Your Honor.

23 REBUTTAL CLOSING ARGUMENT:

24 MR. BRUNSON: Thank you, Your Honor.

25 Ladies and gentlemen, we're close to the end of the

1 attorneys and the witnesses' part of this case. Then the  
2 judge will instruct you, and you'll decide the case as the  
3 finder of facts.

4           As I get started in this final summation, the first  
5 thing I wanted to point out, I wrote down during Mr. Bethel's  
6 closing to you, I wish that when he quoted me, or attempted  
7 to, he would do so accurately. The first thing I wrote down,  
8 he said, I would have you believe that Mr. Gunnings was a  
9 genius when it comes to reading. Did I ever say or imply, or  
10 try to elicit from any witness that Mr. Gunnings was a genius  
11 when it comes to reading? It's obvious he has some reading  
12 difficulties. He has for years.

13           I'll submit to you that when he filled out that  
14 forty-four seventy-three, he knew what he was doing.

15           Mr. Bethel said Doug Johnson didn't have much to  
16 say, but he said it was a federal firearm licensee. Well,  
17 ladies and gentlemen, I assure you of one thing, if I hadn't  
18 gotten that out of his testimony, that would have been a  
19 major thrust of Mr. Bethel's argument that we didn't prove  
20 that it was a federal firearm licensee, because that's an  
21 element of the offense, as you've heard me describe time and  
22 time again. He was an important part of this case.

23           I also told you in opening that no one witness  
24 would put together all of the puzzle pieces. The other  
25 witnesses you could infer he considered to give important

1 testimony because he attacked them. He attacked their  
2 credibility.

3 First Steve Wingo, he said that it was apparent  
4 that Steve Wingo told him to write down yes, then no no no no  
5 no. How do you know he didn't do it? Because he told you he  
6 didn't. That's a figment of Mr. Bethel's imagination. He  
7 was an important witness. He did not, as he told you, tell  
8 Mr. Gunnings how to fill out that form.

9 Assistant District Attorney Bonnie Derrer. Mr.  
10 Bethel attacked her for saying that Mr. Gunnings is obviously  
11 literate and he knew how to fill out the form because he  
12 filled them out. That's credible evidence. He couldn't  
13 overlook that credible evidence, so he has to attack the  
14 witness.

15 Then he attacks Agent Panoke. He's trying a law  
16 enforcement officer's order. You should not, and you'll be  
17 instructed, any more faith and credit to a law enforcement  
18 officer than you should to any other witness. I'm sure  
19 that's common sense to you and you wouldn't anyway. But you  
20 should consider what he has to say, weigh his demeanor on the  
21 stand, measure what he had to say with other being facts that  
22 came out, and while it may be inappropriate in my opinion,  
23 it's often the case that defense attorneys when they don't  
24 have any other defense attack law enforcement.

25 You have heard a number of witnesses. But it boils

1 down to this: As the triers of the facts, the judges of the  
2 facts, did Pierre Gunnings know what he was doing when he  
3 filled out the question eleven B on form forty-four  
4 seventy-three when he stated, "Are you under indictment or  
5 information in any court for a felony or any other crime for  
6 which the judge could imprison you for more than one year?"  
7 And he answered, "No."

8 He knew that he was under indictment in Georgia.  
9 He had made two court appearances.

10 Are you going to weigh the testimony of Steve Wingo  
11 that he didn't fill out or assist in filling out that form?  
12 That's in consideration of Mr. Bethel's argument to you that  
13 that's the only thing that could have happened. I submit to  
14 you, ladies and gentlemen, that's not correct argument. Mr.  
15 Gunnings knew what he was doing. You've got a sworn  
16 obligation to find a fair and impartial verdict without  
17 regard to bias or prejudice or sympathy. And I'll submit  
18 that verdict is going to be guilty for counts one and count  
19 two.

20 Thank you.

21 CHARGE TO THE JURY:

22 THE COURT: Members of the jury, why don't we take  
23 about a five minute recess. When we come back I will charge  
24 you as to the law.

25 (Whereupon, a recess was taken.)

1 THE COURT: Members of the jury, the clerk is now  
2 passing out copies of my instructions on the law. I'm going  
3 to ask that you read these instructions along with me. These  
4 are your copies, so you can mark on them.

5 Again, as I said before, I'm going to ask that you  
6 read these instructions along with me.

7 It is now my duty to instruct you on the rules of  
8 law that you must follow and apply in deciding this case.  
9 When I have finished you will go to the jury room and begin  
10 your discussions, what we call your "deliberations". It will  
11 be your duty to decide whether the Government has proved  
12 beyond a reasonable doubt the specific facts necessary to  
13 find the defendant guilty of the crime charged in the  
14 indictment.

15 You must make your decision only on the basis of  
16 the testimony and other evidence presented here during the  
17 trial. And you must not be influenced in any way by public  
18 opinion, or by either sympathy, or prejudice for or against  
19 the defendant or the Government. Both the defendant and the  
20 Government expect a fair trial at your hands, and that you  
21 will carefully and impartially consider this case without  
22 prejudice or sympathy.

23 You must also follow the law as I explain it to  
24 you, whether you agree with that law or not. You must follow  
25 all of my instructions as a whole. You may not single out or

1 disregard any of the Court's instructions on the law.

2 Now the from time to time --

3 Yes?

4 JUROR: It's missing some pages, I think.

5 THE COURT: You're missing a page?

6 JUROR: Yes, sir.

7 THE COURT: Okay. Are you missing page two?

8 JUROR: It starts out, and then it goes to page  
9 four here.

10 THE COURT: Is everyone missing page two?

11 JUROR: No, I'm not.

12 THE COURT: Will you check and make sure you have  
13 all of the pages? Look at the bottom. If there is anyone  
14 who is missing a page, let me know and we'll make sure you  
15 get a copy. The whole document is seventeen pages.

16 I'm going to start at the top of page two, because  
17 some you have are missing the page two.

18 And you must not be influenced in any way by public  
19 opinion or by either sympathy or prejudice for or against the  
20 defendant or the Government. Both the defendant and the  
21 Government expect a fair trial at your hands, and that you  
22 will carefully and impartially consider this case without  
23 prejudice or sympathy.

24 You must also follow the law as I explain it to  
25 you, whether you agree with that law or not. And you must



1 follow all of my instructions as a whole. You may not single  
2 out or disregard any of the Court's instructions on the law.

3 Now the indictment, or formal charge, against any  
4 defendant is not evidence of guilt. Indeed, every defendant  
5 is presumed by the law to be innocent. The law does not  
6 require a defendant to prove innocence or to produce any  
7 evidence at all. And if a defendant elects not to testify,  
8 you should not consider that in any way during your  
9 deliberations. The Government has the burden of proving a  
10 defendant's guilt beyond a reasonable doubt, and if it fails  
11 to do so you must find that defendant not guilty.

12 Now while the Government's burden of proof is a  
13 strict or heavy burden, it is not necessary that a  
14 defendant's guilt be proved all possible doubt. It is only  
15 required that the Government's proof exclude any reasonable  
16 doubt concerning the defendant's guilt. A reasonable doubt  
17 is a real doubt based upon reason and common sense after  
18 careful and impartial consideration of all the evidence in  
19 the case. Proof beyond a reasonable doubt, therefore, is  
20 proof of such a convincing character that you would be  
21 willing to rely and act upon it without hesitation in the  
22 most important of usual own affairs.

23 If you are convinced that the defendant has been  
24 proved guilty beyond a reasonable doubt, say so. If you are  
25 not so convinced, say so.

1           As stated earlier you must consider only the  
2 evidence that I have admitted in the case. The term  
3 "evidence" includes the testimony of the witnesses and the  
4 exhibits admitted in the record. Remember that the opening  
5 statements and closing statements are not evidence in the  
6 case. It is your own recollection and interpretation of the  
7 evidence that controls. What is said during the opening  
8 statements and closing statements is not binding upon you.

9           Also, you should not assume anything I may have  
10 said that I have any opinion concerning any of the issues in  
11 the case. Except for my instructions to you on the law, you  
12 should disregard anything I may have said during the trial in  
13 arriving at your own decisions concerning the facts.

14           Now when considering the evidence you may make  
15 deductions and reach conclusions which reason and common  
16 sense lead you to make. And you should not necessarily be  
17 concerned about whether the evidence is direct or  
18 circumstantial. "Direct evidence" is the testimony of one  
19 who asserts actual knowledge of a fact, such as an  
20 eyewitness. "Circumstantial evidence" is proof of a chain of  
21 facts and circumstances tending to prove or disprove any fact  
22 in dispute. The law makes no distinction between the weight  
23 you may give to either direct or circumstantial evidence.

24           Now in saying that you must consider all of the  
25 evidence I do not mean that you must accept all of the

1 evidence as true or accurate. You should decide whether you  
2 believe what each witness had to say and how important that  
3 testimony was. In making that decision you may believe or  
4 disbelieve any witness in whole or in part. Also the number  
5 of witnesses testifying concerning any particular dispute is  
6 not necessarily controlling.

7 In deciding whether you believe or do not believe  
8 any witness I suggest you ask yourself a few questions.

9 Did the witness impress you as one who was telling  
10 the truth?

11 Did the witness have any particular reason not to  
12 tell the truth?

13 Did the witness have a personal in the outcome of  
14 the case?

15 Did the witness seem to have a good memory?

16 Did the witness have the opportunity and ability to  
17 observe accurately the things he or she testified about?

18 Did the witness appear to understand the questions  
19 clearly and answer them directly?

20 Did the witness's testimony differ from other  
21 testimony or other evidence?

22 You should also ask yourself whether there was  
23 evidence tending to proving that a witness testified falsely  
24 concerning some important fact, or whether there was evidence  
25 that at some other time a witness said or did something, or

1 failed to do or say something which was different from the  
2 testimony the witness gave before you during that trial.  
3 That was splayed before you during the trial.

4           You should keep in mind, of course, a simple  
5 mistake by a witness does not necessarily mean that the  
6 witness was not telling the truth as he or she remembers it  
7 because people naturally tend to forget some things or  
8 remember other things inaccurately. So if a witness has made  
9 a misstatement, you need to consider whether that  
10 misstatement was simply an innocent lapse of memory or an  
11 intentional falsehood, and that may depend upon whether it  
12 has to do with an important fact or only an unimportant  
13 detail.

14           Now you've heard the testimony of several law  
15 enforcement officials. The fact that a witness may be  
16 employed by the Government as a law enforcement official does  
17 not mean that his or her testimony is necessarily deserving  
18 of more or less consideration, or greater or lesser weight  
19 than that of an ordinary witness.

20           At the same time, it is quite legitimate for the  
21 defense counsel to try to attack the credibility of a law  
22 enforcement witness on the grounds that he or she, or that  
23 his or her testimony may be colored by a personal or  
24 professional interest in the outcome of the case. It is your  
25 own decision after reviewing all of the evidence whether to

1 accept the testimony of the law enforcement witnesses, and to  
2 give that testimony whatever weight, if any, you decide it  
3 deserves.

4           Now when the Government offers testimony or  
5 evidence that a defendant made a statement to someone, the  
6 jury should consider the evidence concerning such a statement  
7 with caution and great care. It is for you to decide first,  
8 whether the defendant made the statement; and, second, if so,  
9 how much weight to give to it. In making these decisions you  
10 should consider all of the evidence about the statement,  
11 including the circumstances under which the defendant may  
12 have made the statement.

13           Now the jury the defendant is Pierre Marcello  
14 Gunnings. The defendant is charged in a two count  
15 indictment. I will now read count one of the indictment to  
16 you.

17           Count one. "On or about December sixteen, two  
18 thousand and six in Lee County within the Middle District of  
19 Alabama Pierre Marcello Gunnings, defendant herein, had  
20 attempted the acquisition of a firearm, a better description  
21 of which is otherwise unknown to the grand jury, from Pawn  
22 Central, Incorporated, a licensed dealer of firearms, did  
23 knowingly make a false and fictitious statement to Pawn  
24 Central Incorporated which statement was intended and likely  
25 to deceive Pawn Central, Incorporated as to a fact material

1 to the lawfulness of such sale and other disposition of the  
2 said firearm in that the defendant represented that he was  
3 not under indictment or in information in any court for a  
4 felony, or any other crime for which the judge could imprison  
5 him for more than one year, even if he received a shorter  
6 sentence through probation.

7 "The fact that the defendant was indicted under  
8 case number zero six four six nine three in the Cobb Superior  
9 Court in the state of Georgia on September twenty-one, two  
10 thousand and six and arraigned on October thirteen, two  
11 thousand and six, all in violation Title Eighteen, united  
12 States Code, Section nine two two A six."

13 Title Eighteen, United States Code, Section nine  
14 two two A six makes it a federal crime or offense for anyone  
15 in the process of buying firearms of making a false statement  
16 to a licensed firearms dealer. The defendant can be found  
17 guilty of that offense only if all of the following facts are  
18 proved beyond a reasonable doubt.

19 First, that the defendant acquired, or attempted to  
20 acquire, a firearm from a federally licensed firearms dealer  
21 as charged.

22 Second, that in doing so the defendant knowingly  
23 made a false or fictitious statement in writing which was  
24 intended to likely to deceive such dealer.

25 And, third, that the subject matter of the false

1 statement was material to the lawfulness of the sale.

2 The term "firearm" means any weapon which is  
3 designed to, or may be readily converted to dispel a  
4 projectile by the action of an explosive. And the term  
5 includes the frame or receiver of any such weapon, or any  
6 firearm muffler or firearm silencer.

7 A federally licensed firearms dealer is one who is  
8 organized or licensed by the federal government to legally  
9 sell and purchase firearms.

10 And statement is false or fictitious if it was  
11 untrue when made. And that it had been known to be untrue by  
12 the person making it.

13 A false statement is likely to deceive if the  
14 nature of the statement, considering all of the surrounding  
15 circumstances at the time, would probably mislead or deceive  
16 a reasonable person of ordinarily prudence.

17 The materiality of the alleged false statement is  
18 not a matter with which you are concerned, but rather is a  
19 question for the Court to decide. You are instructed that  
20 the alleged false statement is fraud in the indictment if  
21 proved it related to a material fact.

22 The word "knowingly" as that term has been used  
23 from time to time in these instructions means that the act  
24 was done voluntarily and intentionally, and not because of  
25 mistake or accident.

1 I will now read count two of the indictment. "On  
2 or about December sixteen, two thousand six in Lee County  
3 within the Middle District of Alabama, Pierre Marcello  
4 Gunnings, the defendant herein, knowingly made a false  
5 statement and representation to Pawn Central, Incorporated, a  
6 person licensed under the provisions of Chapter forty-four of  
7 Title Eighteen, United States Code, with respect to the  
8 information required by the provisions of Chapter forty-four  
9 of Title Eighteen, United States Code to be kept in the  
10 record of Pawn Central, Incorporated in that the defendant  
11 responded "No" to the question eleven B, which asks, "Are you  
12 under indictment or information in any court for a felony or  
13 any other crime in which the judge can imprison you for more  
14 than one year, even if you receive a shorter sentence  
15 including probation?"

16 The fact that the defendant was indicted in case  
17 number zero six four six nine three in the Cobb Superior  
18 Court in the state of Georgia on September twenty-one, two  
19 thousand and six and arraigned on October thirteen, two  
20 thousand and six, all in violate of Title Eighteen, United  
21 States Code, Section nine to four A one A." Title Eighteen,  
22 United States Code, Section nine two four A one A R. makes it  
23 a federal crime or offense for any person to make a false  
24 statement or representation with respect to information  
25 required to be kept in any record a licensed firearm dealer



1 is required by federal law to keep.

2 An A. T. F. form forty-four seventy-three is a  
3 record which a federally licensed firearms dealer is required  
4 by federal law to keep or maintain.

5 The defendant can be found guilty of that offense  
6 only if all of the following facts are proved.

7 First, that the person named as such in the  
8 indictment was a federally licensed firearms dealer at the  
9 time the alleged offense occurred.

10 Second, that the defendant made a false statement  
11 or representation in the firearm records the licensed  
12 firearms dealer was required by federal law to maintain.

13 And, third, that the defendant made the false  
14 statement or representation with knowledge of the falsity.

15 An entry in a record is false if it was untrue at  
16 the time it was made and was then known to be untrue by the  
17 person who made it.

18 The word "knowingly" as that term has been used  
19 form time to time in these instructions means the act was  
20 done voluntarily and intentionally, and not because of  
21 mistake or accident.

22 Now you will note that the indictment charges that  
23 these offenses occurred on or about a certain day. The  
24 Government does not have to prove with certainty the exact  
25 date of the alleged offense. If the Government proves beyond

1 a reasonable doubt that the offense was committed on a date  
2 reasonably near the date alleged.

3 A separate crime is charged with each count of the  
4 indictment. Each count, and the evidence pertaining to it,  
5 should be considered separately. The fact that you may find  
6 the defendant guilty or not guilty in one of the crimes  
7 charged should not control your verdict as to the other. I  
8 caution you, members of the jury, that you are here to  
9 determine from the evidence in this case whether the  
10 defendant is guilty or not guilty. The defendant is on trial  
11 only for the specific offenses alleged in the indictment.

12 Also, in the question of punishment should never be  
13 considered by the jury in any way in deciding the case. If  
14 the defendant is to be convicted, the matter of punishment is  
15 for the judge alone to determined.

16 Any verdict you reach in the jury room, whether  
17 guilty or not guilty, must be unanimous. In other words, to  
18 return a verdict you must all agree. Your deliberations will  
19 be secret. You will never have to explain your verdict to  
20 anyone.

21 It is your duty as jurors to discuss the case with  
22 one another in an effort to reach agreement if you can do so.  
23 Each of you must decide the case for yourself, but only after  
24 full consideration of the evidence with the other members of  
25 the jury. While you are discussing the case do not hesitate

1 to reexamine your opinion and change your mind if you become  
2 convinced that you were wrong. But do not give up your  
3 honest beliefs solely because the others think differently,  
4 or merely to get the case over with. Remember that in a very  
5 real way you are judges, judges of the fact. Your only  
6 interest is to seek the truth from the evidence in the case.

7 Now when you go to the jury room you should first  
8 select one of your members to act as your foreperson. The  
9 foreperson will preside over your deliberations and will  
10 speak for you here in court.

11 If you should desire to communicate with me at any  
12 time, please write down your message or question and pass the  
13 note to the security officer who will bring it to my  
14 attention. I will then respond as promptly as possible  
15 either in writing or by having you return to the courtroom so  
16 I can address you orally. I caution you, however, with  
17 regard to any message or question you might send, that you  
18 should not tell me your numerical division at that time.

19 Now a verdict form has been prepared for your  
20 convenience. You will take the verdict form to the jury  
21 room, and when you have reached unanimous agreement you will  
22 have your foreperson fill in the verdict form, date it and  
23 sign it, and then you'll return to the courtroom.

24 Now I'm going to ask that you step out at this  
25 time. Take all of your personal belongings with you,

1 including your coats and so forth. When you come back in,  
2 you're going to stand right across here. You won't go back  
3 to the jury box. That's why you should take everything with  
4 you. That includes your notes as well as my instructions on  
5 the law.

6 Please step out for just a minute.

7 Do not discuss the case.

8 (Whereupon, the jury was escorted out of the  
9 courtroom, and the following colloquy ensued):

10 THE COURT: Counsel, for some reason the definition  
11 of "knowingly" popped up on the last page of my charge. Was  
12 it on the last page on yours?

13 MR. BETHEL: No, Your Honor.

14 THE COURT: I don't think it was on the jury's  
15 charge. But anyway, it's just a redefinition.

16 Anything else?

17 MR. BRUNSON: The United States is satisfied, Your  
18 Honor.

19 MR. BETHEL: Satisfied, Your Honor.

20 THE COURT: Very good.

21 Who are the alternates? I will tell them, since it  
22 is now eleven-thirty, that they can go to lunch from twelve  
23 until one, and I will give them my standard instructions  
24 about lunch. I won't bring them back in here, however, if  
25 they desire to go to lunch. If they go to lunch, then you

1 will go to lunch at that time and I will go to lunch. If  
2 they don't go to lunch, then we will wait.

3 Bring the jury back in.

4 (Whereupon, the jury was escorted into the  
5 courtroom.)

6 THE COURT: Right across here is fine. Face me,  
7 please.

8 Members of the jury, my instruction has another  
9 definition of "knowingly," but apparently it's not on your  
10 copies. The computers are sort of doing their own thing  
11 today. I think you have the correct instructions now.

12 Now I have Ms. Davenport and Mr. Jordan. You are  
13 our two alternates. You would have served in case one of the  
14 other twelve could not have served.

15 Thank you very much for your service, and you're  
16 free to go at this time. You may leave your notes here. I  
17 know it's been an imposition to appear, but, again, thank you  
18 very much.

19 MR. BETHEL: Your Honor, should they be instructed  
20 not to discuss the case until after a verdict has been  
21 returned in the event something should happen to one of the  
22 jurors and they would have to replace that juror?

23 THE COURT: That is true. So the two of you,  
24 please don't discuss the case in case we have to replace a  
25 juror later.

1           Members of the jury you may now begin your  
2 deliberations.

3           It's now eleven-thirty. If you don't have a  
4 verdict by noon, you may go to lunch from twelve until one.  
5 I will leave that up to you as to whether you want to or not.  
6 If you decide to go to lunch, notify the security officer and  
7 he will let you go to lunch from twelve until one. We won't  
8 go to lunch until you go to lunch.

9           Now if you decide to go to lunch, you're under  
10 these instructions. While at lunch you may not discuss the  
11 case. You may not resume your deliberations until one  
12 o'clock, and you may resume them only when that twelfth juror  
13 is present. So when you come back from lunch, if eleven of  
14 you come back and one of you is late, you can't talk about  
15 the case. Only when that twelfth juror is in the jury room  
16 may you resume your deliberations after lunch.

17           Also we're in tight quarters again. I want to  
18 remind you that if you go to lunch, should it end up that you  
19 might see one of the lawyers or one of the parties or one of  
20 the witnesses at one of the restaurants around here, it's  
21 very important, particularly now since you're in your  
22 deliberations, not to say anything to them because we don't  
23 anyone to think that someone has said something improper to  
24 you. So that's really to maintain your confidentiality. Not  
25 even giving the appearance of saying something to someone

1 else inappropriate.

2           You may now begin your deliberations.

3           Court will be in recess until we have a verdict  
4 from the jury.

5           (Whereupon, the jury was escorted out of the  
6 courtroom to enter into its deliberations at eleven  
7 thirty-two a.m.).

8                               VERDICT OF THE JURY:

9                               (TWO FORTY-SEVEN P.M.)

10           THE COURT: Counsel, I understand the jury has  
11 reached a verdict.

12           (Whereupon, the jury was escorted into the  
13 courtroom at two forty-seven p.m.)

14           THE COURT: I understand you've reached a verdict,  
15 is that correct?

16           THE FOREPERSON: Yes, sir.

17           THE COURT: Will you hand the verdict to the clerk  
18 of the court.

19           (Whereupon, the court examined said document.)

20           THE COURT: The clerk of the court is directed to  
21 file the verdict and read it.

22           COURTROOM DEPUTY CLERK: "As to the charge in count  
23 one of the indictment we, the jury, find the defendant,  
24 Pierre Marcello Gunnings, guilty.

25           "As to the charge in count two of the indictment

1 we, the jury, find the defendant, Pierre Marcello Gunnings,  
2 guilty.

3 "Done this thirteenth day of May two thousand  
4 eight, Tracy Yocal (sic.), foreperson."

5 THE COURT: Anything else from this jury, Mr.  
6 Brunson?

7 MR. BRUNSON: Not from the United States, Your  
8 Honor.

9 THE COURT: Mr. Bethel, would you like the jury  
10 polled?

11 MR. BETHEL: Yes, Your Honor.

12 THE COURT: Members of the jury, I'm going to have  
13 you polled this time. What that means is that the clerk will  
14 call out your last name. Answer yes if the verdict is yours,  
15 answer no if the verdict is not. So as your name is called,  
16 answer yes if the verdict is yours, and answer no if the  
17 verdict is not yours.

18 (Whereupon, the jury was polled and each and every  
19 juror confirmed the verdict as read.)

20 THE COURT: Members of the jury, I'd like to thank  
21 you very much for your service. The genius of this country  
22 is that this is the way we resolve matters. And you have  
23 been a conscientious jury. I'd like to thank you very much.  
24 You are excused at this time.

25 (Whereupon, the jury was escorted out of the



1 courtroom.)

2 THE COURT: Would you bring the defendant forward.

3 Based on the verdict of the jury, it is the order,  
4 judgment and decree of the Court that the defendant is guilty  
5 of both counts of the indictment. Sentencing will be set at  
6 July thirty-one at ten o'clock.

7 The defendant is in the custody of the marshal.

8 (Whereupon, the proceedings were concluded at three  
9 forty-eight p.m.)

10 \* \* \* \* \*

11 COURT REPORTER'S CERTIFICATE

12 I certify that the foregoing is a correct  
13 transcript from the record of proceedings in the  
14 above-entitled matter as prepared by me to the best of  
15 my ability.

16 I further certify that I am not related to any of  
17 the parties hereto, nor their counsel, and I have no  
18 interest in the outcome of said cause.

19 Dated this 3rd day of June 2008.

20

21

22 \s\ Mitchell P. Reisner, CM, CRR  
23 **MITCHELL P. REISNER, CM, CRR**  
24 Official US Dist. Court Reporter  
25 Registered Professional Reporter  
Certified Real-Time Reporter

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